

**Ogletree  
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10/19/10

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**MEMO ENDORSE**

October 18, 2010

**VIA FACSIMILE ONLY - (914) 390-4278**

Hon. Cathy Seibel, U.S.D.J.  
United States District Court  
Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

*Application granted.*  
**SO ORDERED.**  
*Cathy Seibel*  
Cathy Seibel, U.S.D.J.  
10/19/10  
Dated: \_\_\_\_\_

RE: ***Khan Kudo v. Panda Restaurant Group, Inc., et al.***  
***Case No. 09-cv-712-CS***

Dear Judge Seibel:

This firm represents Panda Restaurant Group, Inc. and Panda Express, Inc., the Defendants in the above referenced action. In accordance with Rule 2.B.i of Your Honor's Individual Practices, we write to respectfully request permission to file a five-page Sur-reply memorandum in opposition to Plaintiffs' Motion for Conditional Certification.

In their Reply papers, Plaintiffs submitted sixteen exhibits that they did not include in their moving papers, despite that the records were in their possession long before they served their moving papers in August, 2010. To make matters worse, Plaintiffs' counsel attached these records to an Affidavit in which she declared, repeatedly and *without personal knowledge*, that these records contradict many of the statements contained in Declarations submitted by Defendants' managerial employees.

Defendants strongly disagree with Plaintiffs' counsel's characterization of the evidence, which clearly rests on erroneous assumptions. We believe a Sur-reply is required to ensure the Court has an accurate description of the documents now contained in the Court record, as well as to rebut Plaintiffs' spurious statements attempting to undermine the Declarations of Defendants'

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witnesses. If the Court grants this relief, Defendants will submit a Sur-reply within ten days of the Order granting the request, or such other time as the Court may deem appropriate.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



Dominick C. Capozzola

DCC/dmd

cc: Mary Marzolla, Chris Walsh, Feerick, Lynch, MacCartney PLLC  
Jesse Curtis Rose, Valli, Kane & Vagnini, LLP  
Sharon Margello



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## FACSIMILE TRANSMITTAL

<b>DATE:</b>	October 18, 2010	<b>PAGES:</b>	6 (Including Cover)
<b>TO:</b>	Hon. Cathy Seibel, U.S.D.J.	<b>FROM:</b>	Dominick C. Capozzola, Esq.
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**MESSAGE:**

**Docket No.** 09-cv-712-CS

**Case Name:** Kahn Kudo v. Panda Restaurant Group, Inc. et al.

9163310.1 (OGLETREE)

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AO 458 (Rev. 10/95) Appearance

## UNITED STATES DISTRICT COURT

Southern

DISTRICT OF

New York

## APPEARANCE

Case Number: 09-cv-0712

To the Clerk of this court and all parties of record:

Enter my appearance as counsel in this case for

Plaintiff, Khan Kudo, Individually and on Behalf of All Other Persons Similarly Situated.

I certify that I am admitted to practice in this court.

10/12/2010

Date

Signature

Jesse C. Rose

JR-2409

Print Name

Bar Number

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KHAN KUDO, Individually and on Behalf of All Other  
Persons Similarly Situated,

Plaintiffs,

-against-

PANDA RESTAURANT GROUP, INC., and  
PANDA EXPRESS, INC.,

Civ. No.09-0712 (CS)

Defendants.  
-----X


**DECLARATION AND  
CONSENT TO JOIN SUIT UNDER F.L.S.A.**

I, REI RYAN, do hereby swear and affirm as follows:

1. I make this Declaration based upon personal and professional knowledge.
2. I am over 21 years of age and fully competent to make this Declaration. My address is  
565 S. Mason Road, Katy, Texas.
3. I worked as a General Manager for Defendants from 2008 until 2010 at restaurants  
located in Texas
4. Defendants failed to pay me any overtime compensation even though I regularly worked  
more than 40 hours a week. In fact, I usually worked 50 to 60 hours per week at the  
restaurant site.
5. I, REI RYAN hereby consent to be a party/plaintiff to join this action brought pursuant to  
the Fair Labor Standards Act of 1947, 29 U.S.C. §216 (b).

I DECLARE under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: Oct. 07 2010  
Katy, Texas

  
REI RYAN